Petition

Office-Supreme Court, U.S.
FILED
AUG 10 1981
ALEXANDER L. STEVAS,
CLERK

81-491

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

JACKIE L. ROY, PETITIONER

v.

CIVIL SERVICE COMMISSION
CITY OF WYOMING, OHIO

RESPONDENT

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS, 1st APPELLATE DISTRICT HAMILTON COUNTY, OHIO

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

A state may impose limitations on constitutionally protected rights as a condition of employment for classified employees in the Civil Service where such limitations serve to protect the integrity of such employment. May a state or political subdivision of a state limit constitutionally protected rights to engage in political activity where the state interest is nonexistent or minimal and speculative in nature?

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STATUTORY PROVISIONS AND REGULATIONS INVOLVED

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Jackie L. Roy, prays that a writ of certiorari issue to review the final judgment which was entered in this cause by the Supreme Court of the State of Ohio on May 13, 1981.

During the course of proceedings Jackie Roy, a Police Officer for the City of Wyoming, Ohio was found to be in violation of the civil service regulations of the city by the Civil Service Commission, City of Wyoming, Ohio and was suspended from service; was thereafter found not to be in violation of the Civil Service Rules and law of the State of Ohio by the Court of Common Pleas of Hamilton County, Ohio and was reinstated to his position with full back pay and was once again terminated by decision of the First Circuit Court of Appeals, Hamilton County, Ohio, upholding the decision of the Civil Service Commission. The Supreme Court of the State of Ohio refused to hear the case.

The matter presented is purely a question of law as there was no factual dispute and all facts were submitted to both the Civil Service Commission and the Common Pleas Court by stipulation.

OPINIONS BELOW

The order of the Supreme Court of Ohio (A1-A3); Notice of Appeal to the Supreme Court of Ohio (A-5); the text of the opinion of the First Circuit Court of Appeals, Hamilton County, Ohio (A7-A12) Notice of Appeal to Court of Appeals (A13); the final entry of the Court of Common Pleas, Hamilton County, Ohio (A15-A17); the Appeal from the opinion of the Wyoming Civil Service Commission (A18-A20); Opinion of the Wyoming Civil Service Commission (A21-A31); Agreed Stipulation of Facts (A32-A49); Further Agreed Stipulations (A50-A51); appear in the appendix to this petition.

JURISDICTION

The final judgment of the Supreme Court of Ohio was entered on May 13, 1981. Petitioner, Jackie L. Roy has caused this Petition to be filed in this Court on or before the 11th day of August, 1981, within 90 days after the entry of said judgment by the Supreme Court of the State of Ohio.

The jurisdiction of this court is invoked pursuant to Title 28 U.S.C. 12, Section 1257(3).

STATUTORY PROVISIONS AND REGULATIONS INVOLVED

Ohio Revised Code, Section 124.57:

> "Political activity prohibited. No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution, or payment from any officer or employee in the classified service of the state and the several counties, or city school districts thereof, or civil service townships; nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions."

City of Wyoming, Ohio Civil Service Regulations, Rule IX:

> "The tenure of every officer or employee in the classified service of the City, The City Health District, and the City School District shall be during good behavior and efficient

service and no such officer or employee shall be reduced in pay or position, suspended, or discharged, except for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, service of garnishment, insubordination, discourteous treatment of the public, neglect of duty, violation of Sections 143.01 to 143.48 of the Revised Code, or the rules of the Commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office.

"In any case of reduction, suspension for more than five (5) working days, or discharge, the appointing authority shall furnish such employee with a copy of the order of reduction, suspension, or discharge, which order shall state the reasons therefor. Such order shall be filed with the Commission.

"Within ten days following the filing of such order the employee may file an appeal, in writing, with the Commission. In the event such an appeal is filed, the Commission shall forthwith notify the appointing authority, and shall hear, or appoint a trial board to hear, such appeal within thirty days from and after its filing with the Commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority.

"In cases of discharge or reduction in pay for disciplinary reasons, either the appointing authority or the officer or employee may appeal from the decision of the Commission to the court of common pleas in accordance with the procedure provided by Section 119.12 of the Revised Code.

"In the case of the suspension, demotion, or discharge or the chief of police of any member of the police department, an appeal on questions of law and fact may be had from the decision of the Commission to the court of common pleas. Such appeal shall be taken within ten (10) days from the date of notice of the finding of the Commission."

STATEMENT OF THE CASE

Preliminary Statement

Prior to January 4, 1980, Jackie L. Roy was a police officer in the City of Wyoming, Ohio. There is no dispute by any of the parties that Mr. Roy was an exemplary officer and that his subsequent discharge was in no way a reflection upon his ability as a police officer.

Wyoming, Ohio is a municipality and political subdivision within the State of Ohio. Jackie Roy had been a police officer for the City of Wyoming, Ohio for some period of time.

During the year 1979, Mr. Roy decided that he wished to run for City Council in Elmwood Place, Ohio, the municipality in which he was a resident. Elmwood Place, Ohio is also a political subdivision of the State of Ohio.

The City of Wyoming and the City of Elmwood Place are two separate municipalities within the state of Ohio, which municipalities do not share a common border. The City of Elmwood Place has partisan elections for City Council positions. The City of Wyoming Council is chosen by non-partisan elections.

When the city manager of the City of Wyoming was informed that Mr. Roy was going to run for council in Elmwood Place, he informed Mr. Roy that this would be a violation of the Civil Service Rules and that, in the City Manager's opinion, he could not be a police officer in the City of Wyoming and a City Councilman in the City of Elmwood Place at the same time.

At the general election, in November of 1979 Mr. Roy was elected to his position on City Council in Elmwood Place and was sworn in to that position on January 3, 1980. On January 4, 1980, Mr. Roy was terminated as a police officer by the City Manager of Wyoming, Ohio.

Wyoming Civil Service Regulation Rule IX and Ohio Revised Code, Section 124.57, which is the Ohio Mini Hatch Act as printed above, were the bases for the discharge.

The Initial Hearing

Mr. Roy appealed the dismissal of the City Manager to the City of Wyoming Civil Service Commission. After a hearing was held, the Civil Service Commission upheld the position of the City Manager and determined that Mr. Roy was in violation of the Civil Service Regulations and Ohio law and therefore, should be terminated. The opinion of the Civil Service Commission is attached hereto as appendix (A16-24).

Judicial Review

The decision of the Civil Service Commission was thereafter appealed under Ohio law, to the Common Pleas Court of Hamilton County, Ohio.

The matter came on for argument on cross motions for summary judgment on April 17, 1980. After review of the briefs and consideration of the oral argument, the court found that Officer Roy was not in violation of the Civil Service Regulations or Ohio law. Specifically, the court found:

> "That the provisions of O.R.C., Section 124.57 do not apply to the situation where the political subdivision in which the appellant engaged in partisan political activities is a totally separate political subdivision from that in which he held his classified civil service position."

The full judgment entry of the Common Pleas Court is attached hereto as Appendix (A12-13).

The City of Wyoming then appealed the findings of the Common Pleas Court to the First District Court of Appeals, Hamilton County, Ohio.

Again, the parties briefed the legal positions held by each side. Subsequent to oral argument, the Court of Appeals found in favor of the City of Wyoming, reversing the decision of the Common Pleas Court. (A5-9)

The central finding of the Court of Appeals was as follows:

> "The trial court's finding in Appellee's argument to the effect that Elmwood Place and Wyoming are totally separate subdivisions is not a meritorious decision, as the above cited cases lead us to conclude that any partisan political activity by anyone in a classified civil service position is prohibited irrespective of the fact that the political activity occurred in a political or geographic subdivision other than that political or geographic subdivision in which the classified civil service position was held."

Thereafter, the Appellant Jackie L. Roy filed a timely Notice of Appeal and Memorandum in Support of Jurisdiction to the Supreme Court of the State of Ohio. On May 13, 1981, the Supreme Court of Ohio denied the Motion for Jurisdiction, without hearing. (A1-2) It is from that denial that this Petition is taken.

REASONS FOR GRANTING THE WRIT

Petitioner wishes to make it clear that he is not contesting the overall constitutionality of Ohio Revised Code Section 124.57. We believe that federal and state decisions have made it clear that the Mini Hatch Acts are constitutional.

However, Petitioner does contend that Ohio Revised Code Section 124.57 was never intended to be used in the manner in which it has been used in this case and that to attempt to enforce 124.57 against Officer Roy under these conditions would be an unconstitutional imposition of the statute.

The Ohio Court of Appeals simply found that no matter how separate the political subdivisions may be, Ohio Revised Code Section 124.57 as interpreted by *Jackson v. Coffey*, 52 O.S. 2d 43(1977) prevents partisan political activity by anyone in the classified service. Section 124.57 of the Code is printed in full previously and need not be recited in full here. However, that portion of the statute which is important for the purposes of this cause is set forth as follows:

> "No...employee in the classified service of the...city...shall...take part in politics other than to vote as he pleases and to express freely his political opinions."

While this section would seem clear and unambigious, it must be remembered that the fact situation set forth in the instant cause has not previously occurred.

The principal case relied upon by the Ohio Appellate Court and by Respondent, *Jackson v. Coffey*, supra. involves an individual who was in the classified service of the Ohio Department of Transportation and filed a Petition for Candidacy for the office of committeeman for precinct executive in Sandusky, Ohio. Mr. Jackson was dismissed from the Dept. of Transportation for violation of Section 124.57 of the Ohio Revised Code.

The Supreme Court, in its opinion, stated that while the general assembly had not defined what constitutes "failure of good behavior," it would be logical to conclude that partisan political activity would be included in such behavior. Therefore, according to the court's opinion such activity would be an adequate basis for removal of the employee.

However, neither *Jackson v. Coffey*, supra. nor any other reported case which either side has found in either Ohio or elsewhere follows the fact situation of this cause. The fact situation of the *Jackson v. Cofffey*, supra. involved the State Department of Transportation. Therefore, the boundaries of the agency involved cover the entire state and any partisan political activity within that boundary would violate 124.57, as ruled by the court.

In *Jackson v. Coffey*, supra., as in all of the other reported cases, an overlap of geographic and political boundaries exists. Therefore, any member of the classified civil service of the Department of Transportation seeking a partisan position in any political unit within the state of Ohio might jeopardize the integrity and independence of his own classified position and be in violation of 124.57 of the code.

This rationale has been universally recognized as the basis for 124.57. As set forth in *State Ex Rel Neffner v. Hummel*, 142 O.S. 324, 329 (1943), and later reaffirmed in Jackson, supra:,

> The underlying purposes of the Civil Service Regulations are "to secure the maximum efficiency and integrity in the public service; to restrain persons occupying positions in the classified service from political activities; to prevent discrimination for political, religious or racial reasons; and to guarantee permanent tenure to persons in the classified service."

Since the purpose of Section 124.57 and similar "Mini Hatch Acts" is as set forth in *Neffner*, supra, and subsequent cases, there can be no basis for enforcing 124.57 against Officer Roy, where there is absolutely no overlap between the subdivisions and thus, none of the cited harms set forth as the basis for such Hatch Act would exist. It should be noted that the lower court found the subdivisions to be totally separate and that finding was not attacked.

In *Gray v. City of Toledo*, 323 F. Supp. 1281, 28 O. Misc. 141 (N. D. Ohio, 1971), the Federal District Court found that the needs of the state justified an encoachment upon an individual's first amendment rights as a condition of employment as a classified civil servant. However, in so doing the court stated:

> "...Any restriction imposed by the government upon its employees' political activity must be *directly related* to the goal of prohibiting partisan activity, the *effect of which interferes with the efficiency and integrity* of the public service. *If no such relationship exists, the regulation must be struck down as violative of the first amendment rights of the employees.* The more remote the relationship between the particular activity and the performance of official duty, the more difficult it is for the government to justify the restriction on the grounds that there is a compelling public need to protect the efficiency and integrity of the public service." Gray, supra. at 145 (Emphasis added).

The same court goes on to state:

> "The position taken by this court is that the Hatch Act limitations sanctioned by the Supreme Court...represent the outermost limitations to which any governmental body may restrict the political activities and free speech of its employees."

If, in fact, the District Court in Gray, supra. is correct, the position presently being taken in Ohio, upon which this petition is filed, would lie beyond the realm where government interference with political activity and free speech would be tolerated.

It is a petitioner's contention that, as applied to him, in two totally separate and nonoverlaping municipalities, with no connection, nor even a common border, the interest of the state in preventing political activity is so remote and circumstantial as to make application of the statute in this cause an unconstitutional violation of petitioner's first amendment rights.

To determine whether the state may limit first amendment rights as a condition to public employment, the U.S. Supreme Court has enunciated a "balancing" test.

> "It appears that the government may place limits on campaigning by public employees if the limits substantially serve the government's interests that are 'important' enough to outweigh the employees' First Amendment rights." *Magill v. Lynch,* 560 F. 2d 22, 27 (1st Cir. 1977), citing to *U.S. Civil Service Comm'n., et al. v. National Assn. of Letter Carriers,* 413 U.S. 548 (1973).

This balancing of interests requirement in *Letter Carriers,* supra, was enunciated earlier in *Pickering v. Board of Education,* 391 U.S. 563, 568 (1968), in which the Supreme Court stated:

> "The problem in any case is to arrive at a balance between the interests of the (employee), as a citizen, in commenting upon matters of public concern and the interests of the (government), as an employer, in promoting the efficiency of the public services it performs through its employees."

The position taken by the Appellee and the Court of Appeals is that the prohibition upon partisan political activity is absolute under all circumstances, whether or not there is any public interest to be served by the particular prohibition. They have ignored the balancing test which is required by the U.S. Supreme Court. The First District Court of Appeals stated:

> "...that *any* partisan political activity by *anyone* in a classified civil service position is prohibited irrespective of the fact that the political activity occurred in a political or geographic subdivision other than that political or geographic subdivision in which the classified civil service position was held." (emphasis added)

We can only conclude that there is no legitimate danger which exists to Wyoming's integrity, and there is no overlapping authority, boundary or duty of any nature between the two political subdivisions and therefore, there can be no justifiable state interest in preventing the exercise of first amendment rights in this case.

CONCLUSION

Based upon the arguments above, Petitioner requests that this court grant the Petition for Certiorari to the Supreme Court of Ohio.

Respectfully submitted,

EDWARD G. MARKS

WILLIAM S. WYLER

FRENCH, MARKS, SHORT, WEINER & VALLEAU
Suite 700, 105 East Fourth Street
Cincinnati, Ohio 45202

APPENDIX

APPENDIX -I

THE SUPREME COURT OF OHIO

THE STATE OF OHIO — 1981 TERM

City of Columbus. — To wit: May 13, 1981

No. 81-410

JACKIE L. ROY.

Appellant.

vs.

CIVIL SERVICE COMMISSION,
CITY OF WYOMING.

Appellee.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS

for Hamilton County

TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by Edward G. Marks_____

_____

_____

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

APPENDIX -2

Witness my hand and the seal of the Court

this ..... day of ..... 19 .....

..... *Clerk*

..... *Deputy*

APPENDIX -3

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, *1981 TERM*

City of Columbus. *To wit:* May 13, 1981

No. 81-410

JACKIE L. ROY.

Appellant,

vs.

CIVIL SERVICE COMMISSION,
CITY OF WYOMING.

Appellee.

APPEAL FROM THE COURT OF APPEALS

for HAMILTON *County*

This cause, here on appeal as of right from the Court of Appeals for HAMILTON *County was heard in the manner prescribed by law and upon motion of the appellee to dismiss such appeal.*

On consideration thereof, such appeal is dismissed for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for HAMILTON *county for entry.*

I, Thomas L. Startzman, Clerk of the Supreme Court of

APPENDIX -4

Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this ..... day of .....19.....

..... *CLERK*

..... *DEPUTY*

THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

No. C-800306

JACKIE L. ROY

Appellant

-vs-

CIVIL SERVICE COMMISSION,
CITY OF WYOMING

Appellee

NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO

Notice is hereby given that Jackie L. Roy, Appellee herein and Appellant in the Supreme Court of Ohio, appeals the decision of the Court of Appeals, First Appellate District, Hamilton County, Ohio from the Judgment Entry filed in the above captioned cause filed on February 11, 1981, to the Supreme Court of Ohio. This cause involves a substantial constitutional question.

/s/ EDWARD G. MARKS
Edward G. Marks, Attorney for Appellant

/s/ WILLIAM S. WYLER
Willaim S. Wyler
Counsel for Jackie L. Roy
FRENCH, MARKS, SHORT, WEINER & VALLEAU
700 First National Bank Building
Cincinnati, Ohio 45202
Telephone: 513-621-2260

APPENDIX -6

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal to the Supreme Court of Ohio was served upon Douglas G. Cole, Esq., Attorney for Appellee Civil Service Commission, City of Wyoming, 2100 Central Trust Center, 201 East Fifth Street, Cincinnati, Ohio 45202 by ordinary US Mail this 11th day of March, 1981.

/s/ William S. Wyler
William S. Wyler
Attorney for Appellant

APPENDIX -7

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

No. C-800306

JACKIE L. ROY,

Plaintiff-Appellee,

vs.

CIVIL SERVICE COMMISSION,
CITY OF WYOMING,

Defendant -Appellant.

MEMORANDUM DECISION
AND
JUDGMENT ENTRY.

Mr. Edward G. Marks, 700 First National Bank Building, 105 East Fourth Street, Cincinnati, Ohio 45202, for Plaintiff-Appellee,

Mr. Douglas G. Cole, 2100 Central Trust Center, 201 East Fifth Street, Cincinnati, Ohio 45202, for Defendant-Appellant.

PER CURIAM.

This cause came on to be heard upon the appeal, the transcript of the docket, journal entries and original papers from the Court of Common Pleas, Hamilton County, Ohio, the transcript of the proceedings, the briefs and the arguments of counsel.

Now, therefore, the assignment of error having been fully considered is accordingly passed upon in conformity with App. R. 12 (A) as follows:

Appellee, was discharged from his classified civil service position as a police officer by the appellant, for "other failure of good behavior" under Rule IX of the Wyoming Civil Service Commission. The basis for his dismissal was that appellee ran for, and was elected to, the Council of the Village of Elmwood Place in a partisan political election, in violation of R.C. 124.57. The dismissal was affirmed by the Wyoming Civil Service Commission. Thereafter an appeal was taken to the Hamilton County Common Pleas Court. The trial court granted appellee's motion for summary judgment and denied the same motion of appellant. This appeal arises from said judgment.

The single assignment of error is stated as:

> The Court of Common Pleas erred in granting the motion for summary judgment of Jackie L. Roy, and in overruling the motion for summary judgment of the City of Wyoming, Ohio, contrary to Civil R. 56(C).

The questions involved in the assignment of error are whether the political activity of appellee is prohibited by R.C. 124.57 and whether this is a basis for dismissal under Rule IX of the Wyoming Civil Service Commission as a "failure of good behavior."

APPENDIX -9

Rule IX of the Wyoming Civil Service Commission reads in pertinent part:

> The tenure of every officer or employee in the classified service of the City. . . shall be during good behavior and efficient service and no such officer or employee shall be . . . discharged, except for incompetency, dishonesty, drunkenness, immoral conduct, service of garnishment, insubordination, discourteous treatment of the public, neglect of duty, violation of Sections 143.01 to 143.48 of the Revised Code, or the Rule of the Commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or non-feasance in office.

R.C. 124.57 provides, in pertinent part:

> . . . nor shall any officer or employee in the classified service of the state, the several counties, cities . . . be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.

The recent case of *Jackson v. Coffey* (1977), 52 Ohio St. 2d 43, 45, 368 N.E. 2d 1259, 1260-61 held:

> There is no question that an appointing authority may remove a civil servant for "failure of good behavior" and although the General Assembly has not chosen to specifically define what actions constitute misbehavior subject to removal it is logical to conclude that partisan political activity, proscribed for all classified employees under R.C. 124.57, is included in such behavior. Consequently, there was an adequate basis for removal of the appellee in the instant cause. (Emphasis added.)

See also Heidtman v. Shaker Heights (163 Ohio St. 109, 126 N.E. 2d 138; *State ex rel. Neffner v. Hummel* (1943), 142 Ohio St. 324,

51 N.E. 2d 900. The trial court's finding and appellee's argument to the effect that Elmwood Place and Wyoming are totally separate subdivisions is not a meritorious distinction, as the above cited cases lead us to conclude that any partisan political activity by anyone in a classified civil service position is prohibited irrespective of the fact that the political activity occurred in a political or geographic subdivision other than that political or geographic subdivision in which the classified civil service position was held.

This court further holds that the prohibition against all partisan political activity as set forth in R.C. 124.57 is not a prohibited restriction of first amendment constitutional rights. *See Gray v. City of Toledo* (N.D. Ohio 1971), 323 F. Supp. 1281; *United States Civil Service Commission v. National Association of Letter Carriers* (1973), 413 U.S. 548; *Broadrick v. Oklahoma* (1973), 413 U.S. 601; *United Public Workers of America v. Mitchell* (1947), 330 U.S. 75. In opposition to our holding, the appellee argues that the case of *Mancuso v. Taft* (1st Cir. 1973), 476 F.2d 187 requires the appellant to show a compelling (public) interest to support the exclusion of partisan political activity as a condition of the continued employment of appellee. Such argument is without merit in that the *United States Civil Service*

Commission v. National Association of Letter Carriers, supra and *Broadrick v. Oklahoma, supra*, effectively rejected this proposition, found no overbreadth in state statutes restricting partisan political activity and upheld their contitutionality. Accord, *Magill v. Lynch* (lst Cir. 1977), 560 F. 2d 22, *cert. den.* 434 U.S. 1063 (1978).

The trial court's finding of no incompatibility between the positions of police officer in Wyoming and council member in Elmwood Place is inappropriate in view of our determination that appellee's partisan political activity was prohibited by R.C. 124.57. The common law rule regarding compatibility of non-prohibited activity relied on by the trial court is thus not applicable.

The assignment of error is sustained.

The assignment of error properly before this Court having been ruled upon as heretofore set forth, it is the Order of this Court that the judgment or final order herein appealed from be, and the same hereby is reversed and that a final judgment be entered for appellant.

It is further Ordered that a mandate be sent to the Court of Common Pleas of Hamilton County, Ohio, for execution upon this judgment.

Costs to be taxed in compliance with Rule 24, Appellate Rules.

And the Court being of the opinion that there were reasonable grounds for this appeal, allows no penalty.

It is further Ordered that a certified copy of this Memorandum Decision and Judgment shall constitute the mandate pursuant to App. R. 27.

To all of which the appellee, by his counsel, excepts.

SHANNON, P.J., KEEFE AND DOAN, J.J.

APPENDIX -13

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

Case No. A-801776

JACKIE L. ROY

Appellant

and

CIVIL SERVICE COMMISSION,
CITY OF WYOMING

Appellee

NOTICE OF APPEAL

Notice is hereby given that the City of Wyoming, Appellant, hereby appeals to the Court of Appeals of Hamilton County, Ohio, First Appellate District from the final judgment granting the motion for summary judgment of Jackie L. Roy and overruling the motion for summary judgment of the City of Wyoming, Ohio, entered in this action on April 24, 1980.

/s/ DOUGLAS G. COLE
Douglas G. Cole
City Solicitor
City of Wyoming
2100 Central Trust Center
201 East Fifth Street
Cincinnati, Ohio 45202

Telephone: (513) 621-2120

TO THE CLERK:

Please prepare and file with the Clerk of the Court of Appeals of Hamilton County, Ohio, First Appellate District, the

original papers and exhibits thereto filed in this cause in the Court of Common Pleas, and a certified copy of the docket and journal entries. There is no transcript.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Notice of Appeal has been served on Edward G. Marks, Esq., French, Marks, Short, Weiner & Valleau, 700 First National Bank Building, Cincinnati, Ohio 45202, this 28th day of April, 1980.

/s/ DOUGLAS G. COLE
Douglas G. Cole

APPENDIX -15

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Case No. A-801776

IN RE:

JACKIE L. ROY

Appellant

and

CIVIL SERVICE COMMISSION,
CITY OF WYOMING

Appellee

JUDGMENT ENTRY

This matter came on for hearing on April 17, 1980, upon the Notice of Appeal filed on behalf of Jackie L. Roy; the Stipulations entered into by the parties and presented to the Court (which Stipulations are hereby specifically adopted and accepted); a Motion for Default Judgment filed by Jackie L. Roy; a Motion for Summary Judgment filed by the City of Wyoming; and the briefs and arguments of counsel.

The Court finds that Jackie L. Roy was dismissed from a classified civil service position as a Wyoming Police Office on January 4, 1980, by the City Manager of the City of Wyoming for "other failure of good behavior" under Rule IX of the Regulations of the Wyoming Civil Service Board (Commission) and that the sole basis for such dismissal was that Jackie L. Roy's stipulated political activity, in running for election to his currently-held seat on the Council of the Village of Elmwood Place in a partisan race violated ORC Section 124.57 and therefore constituted "other failure of good behavior." The Court further finds that Jackie L. Roy appealed his dismissal to the Wyoming Civil Service Board (Commission), which body affirmed the order of dismissal, whereupon the instant appeal was filed with this Court.

The Court further finds that Jackie L. Roy's Motion for Default Judgment should be, and it therefore has been treated as a Motion for Summary Judgment pursuant to Civil Rule 56.

Upon the merits, the Court finds:

(A) that the acts of Jackie L. Roy engaging in political activity do not constitute "other failure of good behavior" under the circumstances of this case, in that the political subdivision in which he engaged in such political activity (Elmwood Place) is a totally separate subdivision from that in which he held his classified civil service position (Wyoming); and

(B) That the provisions of ORC Section 124.57 do not apply to the situation where the political subdivision in which the Appellant engaged in partisan political activities is a totally separate political subdivision from that in which he held his classified civil service position; and

(C) There is no incompatibility between the positions as police officer in Wyoming and a council member in Elmwood Place.

For the foregoing reasons, the Motion of Plaintiff-Appellant Jackie L. Roy is granted; the order of dismissal dated January 4, 1980, is vacated, held invalid and set aside; Jackie L. Roy is reinstated to his position as a police officer with restoration to all rights (including, but not limited to rank, pension and seniority rights) as though no dismissal had occurred; Jackie L. Roy is entitled to back pay for the entire period from January 4, 1980, to the date of this order (subject, however, to a setoff equal in amount to any income he earned from other sources which he would not have earned had he continued as a police officer during the period in question); and all such amounts shall be paid to him as promptly as is practicable.

The Motion for Summary Judgment by the City of Wyoming is overruled and dismissed.

All at the costs of Defendant-Appellee.

Exceptions are noted to Defendant-Appellee

SO ORDERED.

William R. Matthews, Judge

Edward G. Marks
Co-Counsel for Plaintiff-Appellant

William S. Wyler
Co-Counsel for Plaintiff-Appellant

Douglas G. Cole
Co-Counsel for Defendant-Appellee

APPENDIX -18

CIVIL SERVICE COMMMISSION

CITY OF WYOMING, OHIO

Case No. A8001776

JACKIE L. ROY
409 Maple
Cincinnati, Ohio 45216

Appellant

and.

CIVIL SERVICE COMMISSION,
CITY OF WYOMING
800 Oak St.
Wyoming, Ohio 45215

Appellee

APPEAL FROM THE CIVIL SERVICE COMMISSION OF WYOMING, OHIO TO THE COURT OF COMMON PLEAS OF HAMILTON COUNTY, OHIO

Please be advised that Jackie L. Roy (hereafter Appellant) hereby appeals the decision of the Civil Service Commission (sometimes known as the Civil Service Board) of the City of Wyoming, Ohio (hereafter Appellee) which decision was rendered by Appellee (and mailed to Appellant's counsel on the 22nd day of February, 1980, and which purports to uphold the termination of Appellant as a Civil Servant of the City of Wyoming, thus adversely affecting him. A copy of such Order is attached hereto and incorporated herein.

The bases for this appeal are:

(1) The Appellee erred in applying §ORC 124.57 to the facts before it, since freedom of speech and of political expression are protected activities under Amendment I, U.S. Constitution and Article I, §2, Ohio Constitution; and, as applied to Appellant

(whose political activity was in a totally separate community from Wyoming, with no possibility of "cross-over" influence upon his duties within the City of Wyoming) ORC 124.57 violates such Constitutionally-protected activities.

(2) The Appellee erred in finding that Appellant was discharged under proper procedure and not in violation of ORC §737.12.

(3) The Appellee erred in finding that Appellee is a properly constituted and seated Civil Service Commission and is not in violation of ORC §124.40.

(4) The Appellee erred in failing to remove the City Manager of Wyoming, Ohio as Secretary of Appellee in the face of the obvious conflict between his positions as the discharging official and a fiduciary of the Civil Service Commission.

(5) The Appellee erred in holding that the conduct of Appellant in engaging in partisan political activity was a violation of the Wyoming, Ohio Civil Service Regulations for "failure of good behavior" since ORC 124.57 is not in effect under Appellee's own Civil Service Regulations.

WHEREFORE, Appellant hereby asks that the decision of the Civil Service Commission of Wyoming, Ohio, be reversed and that Appellant be reinstated to his prior position of police officer with no loss of seniority; that he be granted back pay and all other credits due during his unlawful suspension; for interest on lost pay back to the date of suspension; costs of this action; and any other relief to which Appellant is entitled, including reasonable award toward attorneys fees.

/s/ EDWARD G. MARKS
Edward G. Marks
Attorney for Appellant
700 First National Bank Bldg.
Cincinnati, Ohio 45202
(513) 621-2260

APPENDIX -20

CERTIFICATE OF SERVICE

I hereby certify that true copies of the within Appeal have been personally delivered to the Civil Service Commission, City of Wyoming, Ohio, Wyoming City Hall, Wyoming, Ohio; and to L.R. Orendorff, Acting City Manager, City of Wyoming, Ohio, Wyoming City Hall, Wyoming, Ohio, on this 28th day of February, 1980.

/s/ EDWARD G. MARKS
Edward G. Marks

APPENDIX -21

JACKIE L. ROY VERSUS CITY OF WYOMING, OHIO

Appeal from the action of the City Manager,
City of Wyoming, Ohio.

This appeal arises from the discharge of Mr. Jackie L. Roy as a police officer of the City of Wyoming, Ohio on January 4, 1980 by the City Manager of the said City of Wyoming, Ohio.

The Hearing was conducted January 29, 1980 before the Civil Service Commission of the City of Wyoming, Ohio consisting of Mr. William D. Fentress and Edward L. Field, Chairman. Counsel representing the appellant were Edward G. Marks and William S. Wyler, Esquires. The City of Wyoming was represented by its Solicitor, Douglas G. Cole, Esquire.

At the outset of the Hearing the parties submitted an "Agreed Stipulation of Facts" with Exhibits numbered one through seven attached thereto. These are incorporated into the record of this determination.

Counsel for the appellant, Patrolman Roy, raised several matters challenging the jurisdiction of the Commission to hear the matter and/or to the procedures the Commission was following. The Commission will address these challenges prior to considering the substantive issues:

First: Counsel for the appellant cited Section 737.12 O.R.C. in support of the argument that the City did not follow the correct procedure in that the discharge of Patrolman Roy had been by the City Manager and not by the director of Public Safety, who was claimed to be the only public official with the power to discharge.

The City of Wyoming does not have a separate Director of Public Safety. Instead pursuant to Article 5, Section 3 of the City's Charter, the City Manager . . . "shall serve as head of any department or office except as treasurer or solicitor." . . . as such the City Manager functions as the Director of Public Safety for the City of Wyoming.

In addition Article 5, Section 3 of the Charter specifies the City Manager's authority in the role of Director of Public Safety . . . "He shall have authority to make all appointments and removals of employees of the Municipality in the departments and offices under his control."

The Commission concludes that the Police Department is one of the departments under the administration of the City Manager and that it was within his authority to discharge the appellant.

Second: Counsel for the appellant questions the composition of the Commission in that the two member Commission of the City of Wyoming does not conform to the three member Commission provided in the provisions of O.R.C. 124.40.

APPENDIX -23

It is the understanding of the Commission that the provisions of O.R.C. 124.40 apply only to Civil Service Commissions in non charter cities. Wyoming is a charter city and derives its authority pursuant to the "Home Rule" provisions of Section 10, Article XV of the Ohio Constitution.

Further the City Solicitor directed the Commission's attention to the ruling of the Supreme Court of Ohio in the case of *State, ex rel. Lentz vs. Edwards*, 90 O.S. 305 (1914) which held in part:

> "The manner of regulating the civil service of a city is peculiarly a matter of municipal concern . . .
>
> "As long as the provisions made in the charter of any municipality with reference to its civil service comply with the requirement of Section 10, Article XV, and do not conflict with any other provisions of the constitution, they are valid and under the cases referred to discontinue the general law on the subject as to that municipality. That provision adopted by a city might differ from the general laws within the limits defined was not only expected but the very purpose of the amendment was to permit such differences and make them effective."

The Commission concluded that under its "Home Rule" authority the City of Wyoming does not necessarily have to establish a three person Civil Service Commission. Instead, it is proper for the City of Wyoming to have a two person Civil Service Commission, as it has seem fit to do.

Third: Counsel for the appellant raised questions as to possible impropriety steming (sic) from the relationship of the City Manager with the Civil Service Commission.

The City Manager is not a member of the Commission. He does serve as the Secretary of the Commission in its normal proceedings. In the case at hand, the Commission has exercised care to assure that its deliberations of the facts were entirely exclusive of and independent from any relationship with the City Manager, other than to have the City Manager participate as a duly sworn witness at the Hearing.

Fourth: Counsel for the appellant pointed out that the published Rules and Regulations of the Wyoming Civil Service Commission, Rule IX thereof, which provides for "Reductions, Suspensions and Discharges" contains provisions relating to Sections 143.01 to 143.48 of the Revised Code. Further counsel pointed out that these sections have been replaced with new section numbers as the result of subsequent revision of the Code of Ohio in 1973.

The Commission accepts the fact the Code Section numbers contained in Rule IX have not been updated to reflect the Code Section renumbering stemming from the 1973 revision of the Ohio Code.

Discussion of this matter at the Hearing between the counsel for the appellant and the City Solicitor resulted in the counsel for the appellant conceeding that the old Code Section 143.48 for all practical purposes was the same as renumbered Section 124.57 of the current Code as revised. Further all of the correspondence between the parties as contained in the "Agreed Stipulation of Facts" indicates that the issue at hand related directly to Section 124.57 O.R.C. and that this was understood by all the parities concerned.

In addition, Rule IX of the said Commission Rules and Regulations provides not only reference to the above mentioned Code Section, but also a separate and independent grounds for discharge contained in the following provision ". . . or any other failure of good behavior".

Assuming for purposes of argument that the failure to update and renumber old Section 143.48 to reflect the new Revised Code Section 124.57 precludes direct reference to this Revised Code Section, then the alternative basis for a discharge contained in the provision "or any other failure of good behavior" falls within the purview of O.R.C. 124.57.

The City Solicitor argued that political activity proscribed by

O.R.C. 124.57 comes within the language of "or any other failure of good behavior." In support of this point of view the Solicitor cited the decision of the Supreme Court of Ohio decided November 2, 1977 *Jackson v. Coffey*, 52 O.S. 2d 43 (and other decisions cited therein) which held in point:

> ". . . There is no question that an appointing authority may remove a civil servant for 'failure of good behavior' and although the General Assembly has not chosen to specifically define what actions constitute misbehavior subject to removal, it is logical to conclude that partisan political activity, proscribed for all classified employees under R.C. 124.57, is included in such behavior. Consequently there was an adequate basis for removal of the appellee in the instant cause."

Counsel for the appellant took the opposite point of view and cited *State ex rel. Ashbaugh vs. Bahr*, 68 0. App. 308 and *State ex rel. Attorney General vs. Hoglan*, 64 O. St. 532 in support thereof.

The Commission's reading of these cases leads to the conclusion that they are not directly applicable or they are distinguishable on their facts from the matter under consideration in this Hearing. Therefore, the Commission concludes the Solicitor's point of view to be the proper one.

Fifth: Counsel for the appellant raised the issue of incompatibility in that Patrolman Roy's role as a police officer in the City of Wyoming, Ohio was in no way subordinate to his role as an elected Councilman in the Village of Elmwood Place, Ohio, or vice versa - and therefore Section 124.57 O.R.C. should not apply. (*Gray vs. Toledo*, 28 Ohio Misc. 141 (1971).

The "Agreed Stipulation of Facts" established that Patrolman Roy was in the classified civil service of the City of Wyoming, Ohio and that he had engaged in partisan politics. Therefore, the question of compatibility or incompatibility is not relevant to the facts at hand. If Patrolman Roy had been employed in an unclassified civil service position in the City of Wyoming, this issue may have been relevant.

In addition to the "Agreed Stipulation of Facts" incorporated into the record of this proceeding, the Commission accepted and incorporates into the record the letter of October 31, 1979 from Solicitor Douglas G. Cole addressed to Edward G. Marks, Esq. It is designated as Exhibit #8, consisting of two pages. This letter was accepted to fill in the chronological sequence of the exchange of letters which had occurred between the

parties prior to this Hearing.

During the course of the Hearing the counsel for the appellant raised several issues to which the Commission wishes to address itself.

1. The inference was raised that the City of Wyoming officials such as the City Manager and/or the Chief of Police were late or remiss in raising with Patrolman Roy, once they were aware of his political activities in the Village of Elmwood Place, that such activities may be illegal.

The Commission observed that the "Agreed Stipulation of Facts" makes it clear that Patrolman Roy was placed on official notice of the potential illegality as of October 9, 1979. More important, it has not come to the Commission's attention that the City Manager or Chief of Police were under any legal obligation to apprise Patrolman Roy concerning the possible illegality of the activities he had undertaken in the Village of Elmwood Place of his own free will and volition. The "Agreed Stipulation of Facts" is devoid of any indication that Patrolman Roy sought an official interpretation concerning his activities prior to October 9, 1979.

2. What transpired at the informal meeting on the morning of October 17, 1979 in the office of the City Manager is in dispute and this is so indicated in the "Agreed Stipulation of Facts". The crux issue is whether or not the stipulation that Patrolman Roy would cease his political

campaigning and resign if elected was conditioned on obtaining an opinion of the Ohio Attorney General based upon a statement of facts jointly prepared.

The Commission has reviewed carefully the testimony of Patrolman Roy. We conclude that while Patrolman Roy may have had some notion that the Attorney General's opinion might be sought, this fact was not so stated or expressed at the meeting on October 17 by Patrolman Roy. Further the testimony of both the City Manager and Chief of Police corroborate this finding.

Since this meeting came about by Patrolman Roy voluntarily and informally coming to the office of the City Manager to discuss his activities, as of the morning of October 17, the city officials present had every reason to believe the agreed steps to resolve the matter were not conditioned upon obtaining an opinion of the Ohio Attorney General.

3. The argument was advanced that Patrolman Roy's regard as a police officer and private citizen was the very best. Therefore, Section 124.57 O.R.C. should not apply in these circumstances.

The Commission concurs that Patrolman Roy's reputation

and performance of duties are good. These are not the issues before the Commission and are not relevant to the thrust of this Hearing. The Ohio Supreme Court in *Jackson vs. Corret, supra,* stated, directly in point:

> "... The purposes of the regulations, and specifically of R.C. 124.57, would be subverted if a classified employee could escape the proscriptions of R.C. 124.57 by simply showing a satisfactory employment record."

In summary the Commission finds:

1. That the Civil Service Commission of the City of Wyoming, Ohio is the proper forum to consider this appeal.

2. That Patrolman Jackie L. Roy was in the classified civil service of the City of Wyoming, Ohio in the capacity of a police officer.

3. That while in the said classified civil service Patrolman Jackie L. Roy engaged in partisan politics by campaigning for and being elected a Councilman in the Village of Elmwood Place, Ohio.

4. That such activities of Patrolman Jackie L. Roy constitute a "failure of good behavior" under Rule IX of the Rules and Regulations of the Civil Service Commission of the City of Wyoming, Ohio and also a

violation of Section 124.57 of the Ohio Revised Code.

5. That therefore the City Manager of the City of Wyoming, Ohio was in the proper exercise of his duties in discharging Patrolman Jackie L. Roy from the police force of the City of Wyoming, Ohio.

6. That the foregoing findings premised on Section 124.57 O.R.C. make it unnecessary for this Commission to rule upon points 2 and 3 contained in Exhibit 7 of the "Agreed Stipulation of Facts" as to whether or not these may also constitute failure of good behavior.

Signed this the 22nd day of February, 1980.

/s/ WILLIAM O. FENTRESS
William O. Fentress

/s/ EDWARD L. FIELD
Edward L. Field, Chairman
Civil Service Commission
City of Wyoming, Ohio.

APPENDIX -32

CIVIL SERVICE COMMISSION

CITY OF WYOMING, OHIO

IN RE APPEAL OF

JACKIE L. ROY

AGREED STIPULATION OF FACTS

For all purposes of this appeal from the action of the City Manager of the City of Wyoming, Ohio in discharging Jackie L. Roy as a police officer on January 4, 1980, Jackie L. Roy and the City of Wyoming, do agree and stipulate that the following facts are true and correct:

1. That L.R. Orendorff is and was at all times relevant to this appeal the duly appointed and acting City Manager of the City of Wyoming.

2. That Jackie L. Roy, prior to January 4, 1980, was serving in the classified civil service of the City of Wyoming, Ohio as a police officer.

3. That while serving as a police officer for the City of Wyoming, Ohio, Jackie L. Roy was endorsed by the Republican Party of the Village of Elmwood Place, Ohio to be one of said Party's candidates in the partisan election campaign for the position of councilman in said Village, in the November 6, 1979

election, opposing candidates endorsed by the local Democratic Party, as well as other candidates endorsed by the Republican Party and other endorsing groups.

4. On October 9, 1979, he was advised in writing by the City Manager of the City of Wyoming of the Manager's position that a person in the classified civil service could not at the same time become a partisan candidate for Village Council. The Manager also directed that he should either resign as a police officer or withdraw from the partisan candidacy for the Village Council. (Exhibit 1) Patrolman Roy disagrees with the City Manager's interpretation of the law.

5. On October 16, 1979, Edward G. Marks, attorney for Jackie L. Roy, suggested in a letter (a copy of which was hand-delivered to the City Solicitor) that the City Manager seek an Opinion of the Ohio Attorney General to determine the proper interpretation to be placed upon applicable sections of the Ohio Revised Code. (Exhibit 2) The City Manager has not sought or received such an opinion from the Attorney General.

6. On October 17, 1979, a meeting took place at about 8:30 a.m. among Patrolman Roy, the City Manager, the Chief of Police and the City Solicitor. There is dispute as to what was said at that meeting (Exhibits 3a, b, c).

7. In the election of November 6, 1979, Jackie L. Roy was elected to the office of Councilman in the Village of Elmwood Place, Ohio.

8. Thereafter, Jackie L. Roy was sworn into said office on January 2, 1980, and is currently serving as a Councilman for said Village of Elmwood Place, Ohio.

9. At no time after November 6, 1979, did Jackie L. Roy resign either as a police officer of the City of Wyoming, Ohio, or as Councilman of the Village of Elmwood Place, Ohio.

10. On January 4, 1980, upon receiving the oral statement from Jackie L. Roy that he did not intend to resign either office, he was discharged as a police officer of the City of Wyoming, Ohio, by the City Manager. (Exhibit 4).

11. Jackie L. Roy did file his appeal to the Wyoming Civil Service Commission, within the time permitted, on January 7, 1980. (Exhibit 5).

12. On January 7, 1980, Jackie L. Roy, by counsel, did demand that the City Manager amend his order by specifying the acts or omissions constituting failure of good behavior, (Exhibit 6), and on January 18, 1980, the City Manager specified such acts in writing. (Exhibit 7).

13. Jackie L. Roy has remained ready, willing and able to

continue his services as a patrolman, and has tendered performance of such services to the City of Wyoming.

We hereby agree to the above stipulated facts.

JACKIE L. ROY

BY: /s/ EDWARD G. MARKS
Edward G. Marks, his attorney

THE CITY OF WYOMING, OHIO

BY: /s/ DOUGLAS G. COLE
Douglas G. Cole, City Solicitor

APPENDIX -36

October 9, 1979

Officer Jackie L. Roy
Wyoming Police Department
800 Oak Avenue
Wyoming, Ohio 45215

Dear Officer Roy:

It has been brought to my attention that you are one of the Republican party candidates for the office of member of village council in the Village of Elmwood Place, Ohio.

The Ohio Revised Code specifically prohibits an employee in the classified service of cities from taking part in politics other than to vote as he pleases and to express freely his political opinions. Further, there are Ohio Attorney General opinions that would indicate that a person in the classified service can not, at the same time, become a candidate for village council.

Therefore, you are hereby requested to either resign your position of Police Officer on the Wyoming Police Department or file sufficient evidence with me of your immediate withdrawal from candicacy (sic) for the office of member of council in the Village of Elmwood Place.

I further request that you comply with the foregoing no later than October 11, 1979.

Sincerely yours,

/s/ L. R. ORENDORFF
L. R. Orendorff
City Manager

LRO:rlr

Copy to: Wyoming City Solicitor
Police Chief Hess
Wyoming Civil Service Commission

October 16, 1979

Mr. L. R. Orendorff
City Manager
City of Wyoming Municipal Building
Oak & Washington Sts.
Wyoming, Ohio 45215

Re: Patrolman Jackie Roy

Dear Mr. Orendorff:

Since my letter to you and our conversation of last week, we have researched the issue of the relationship of Patrolman Roy's civil service position with the City of Wyoming and his candidacy for city council in his resident city, Elmwood Place. We have reviewed not only the statute, but also the cases decided under that code section and the opinions of the Attorney General interpreting it.

In short, we find no authority requiring him to elect between resigning from the council race and resigning from the police force.

Our research, including contacts of appropriate State agencies, reflects that this issue -- where a civil service employee in one community involves himself in the political process in a completely autonymous, separate community -- has not been decided, and that no advisory opinions have been rendered in analyogous situations. In each of the reported cases, there was some "crossover" of authority, where the individual's political position (or intended position) might have an effect upon his civil service job responsibilities or his salary and working conditions. This is not the case in our "dispute," and the potential evils which the statute so clearly intends to prevent cannot possibly come into play if Patrolman Roy serves in both the Elmwood Place Council position and as a police officer in Wyoming.

I might add that we have become aware of numerous "exceptions" being granted in individual instances -- including the case of a former Wyoming councilman who also served as a government civil servant.

Let me suggest a two-pronged approach to solving the instant dispute without resort to the "no-win" alternatives (which would include charges of retaliation and attempted pressures to terminate the current police referendum activities):

(a) Patrolman Roy would cease active campaigning in Elmwood Place. If he loses the election, the entire issue will become moot.

(b) You request an opinion from the Ohio Attorney General based upon a statement of the facts jointly prepared by us.

In the event Patrolman Roy is elected in Elmwood Place, he would have the option of (a) resigning and participating in the selection of his successor; (b) "toughing it out" and testing the issue in the courts, should you still feel your interpretation is correct; or (c) accepting the opinion of the Attorney General, should he issue an opinion upon request.

I might mention that it is too late to have Patrolman Roy's name removed from the ballots, as they already have been printed.

Very truly yours,

FRENCH, MARKS, SHORT, WEINER & VALLEAU

Edward G. Marks

EGM/ss

cc: Douglas G. Cole, Esq.
Jackie L. Roy

APPENDIX -39

October 17, 1979

Edward G. Marks, Esq.
700 First National Bank Building
Cincinnati, Ohio 45202

Re: Patrolman Jackie Roy

Dear Ed:

Jackie Roy met with City Manager Orendorff, Chief Hess and myself this morning. In the meeting, Officer Roy offered to withdraw from further campaigning for councilman in the Village of Elmwood; and agreed that if elected he would immediately resign such position.

In view of the fact that the ballots for the November 6, 1979 election have already been printed with no way to take his name off the ballot, the City Manager has agreed to Officer Roy's offer, and will not institute any action against Officer Roy under O.R.C. 124.57.

It is the position of the City of Wyoming that a police office in the classified civil service may not engage in partisan politics in any political form, and may not run for or hold office as a councilman in any city or village.

We are accepting Officer Roy's proposal because it does recognize the City of Wyoming's position under O.R.C. 124.57, with the City at the same time recognizing Officer Roy's lack of knowledge regarding the consequences of his decision to run for the Elmwood council.

This equitable resolution of the problem was satisfactory to all parties at the meeting, and the City of Wyoming will mark the incident closed, assuming that Officer Roy abides by his pledge to stop campaigning and to resign immediately, if elected.

Thank you for your efforts in the matter.

Very truly,

Douglas G. Cole
City Solicitor

EGC/dw

cc: Mr. L. R. Orendorff
Chief Robert Hess

APPENDIX —41

CONFIDENTIAL

October 17, 1979

To: Wyoming City Council Members

From: City Manager

Subject: Officer Jackie Roy

Early this morning I held a meeting with Officer Roy, Chief Hess and Solicitor Doug Cole with the following results:

1. It is too late for his name to be removed from the ballots because they have been pronted (sic). However, Officer Roy has agreed to cease, immediately, any campaiging both on his own behalf or on behalf of any other candidate for office in Elmwood Place.

2. In the event that he should be elected to the office of Council member in Elmwood Place, he has stated that he will immediately renounce his right to hold office.

3. If he is not elected the entire question is moot.

I have agreed to this arrangement and Officer Roy will remain on the Police Department as a member in good standing.

This has been a difficult situation to say the least. I am confident that the arrangement that I have agreed to will be for the best. I hope the matter will end here.

Respectfully submitted,

/s/ L. R. Orendorff
L. R. Orendorff
City Manager

APPENDIX -42

January 4, 1980

Patrolman Jackie L. Roy
City of Wyoming
800 Oak Avenue
Wyoming, Ohio 45215

Dear Mr. Roy:

You have, while employed as a police officer in the City of Wyoming, Ohio, under the classified civil service of said city, run for office of Councilman in the Village of Elmwood Place, Ohio, in the election held on November 6, 1979, on the partisan Republican ticket, have been elected to said office and been sworn into said office.

You have advised me since such election that you refuse to resign such office, or resign as a police officer of the City of Wyoming, Ohio.

Under such circumstances this is to advise you that effective today, January 4, 1980, you are discharged as a police officer of the City of Wyoming, Ohio, for violating the provision of O.R.C. 124.57, to wit: while in the classified civil service of the city, you did take part in partisan politics by becoming a Republican candidate for, being elected to and accepting the office of member of council in the Village of Elmwood Place, Ohio, and for failure of good behavior.

Pursuant to such discharge, you shall immediately surrender to the Chief of Police of the City of Wyoming, Ohio, any and all city equipment in your possession, including badges, sidearms, uniforms, etc.

You are further advised that you may, within ten days following the date of this order of discharge, file an appeal, in writing, with the Wyoming Civil Service Commission.

Very truly yours,

/s/ L.R. ORENDORFF
L. R. Orendorff, City Manager

LRO:rlr

CC: Wyoming Civil Service Commission
Douglas G. Cole, City Solicitor
Robert Hess, Chief of Police

APPENDIX 44

October 29, 1979

Douglas G. Cole, Esq.
2100 Central Trust Center
Cincinnati, Ohio 45202

Re: Patrolman Jackie Roy

Dear Doug:

I was most distressed to receive your letter of October 17, 1979, and even more distressed to learn that it does not accurately reflect Jackie's understanding of what occurred at that meeting.

Substantively, as I stated in my earlier letter, Jackie Roy has offered to withdraw from further active campaigning for councilman in the Village of Elmwood. He has agreed, as outlined in my earlier letter to you, that in the event he is elected and in the event the Attorney General determines that Section 124.57 of the Ohio Revised Code requires that step, he will either quietly step down from his council position or quietly resign from the Wyoming Police Department. Patrolman Roy does not recognize the City's position under Section 124.57 as being the correct one; he and I fully understand the arguments which you have proposed in favor of its interpretation as you set forth in your letter. I already have indicated to you that your interpretation of the law does not comport, in our situation, to the clear intent of that Code Section, and I do not feel that Section 124.57 applies. Had you given me the opportunity to be present at your meeting of October 17 with my client, he and I would have reinforced that position quite strongly -- while, perhaps, nonetheless entering into a compromise agreement with you along the lines which I have set forth hereinabove.

I hope that this letter will clarify, at the least, the positions of the parties. According to everything I have learned, the outline set forth above expresses the "equitable resolution of the problem" as agreed to at your meeting of October 17. Officer Roy has abided in all respects with his side of that agreement, and has taken no part in any campaign activities since October 15, 1979, and he does not intend to actively campaign between now and the general election of November 6.

If this letter does not accurately express the understanding of the parties, please advise me so that we can sit down -- all of us, not just some of us -- and figure out whether we are still in dispute.

Very truly yours,

FRENCH, MARKS, SHORT,
WEINER & VALLEAU

Edward G. Marks

EGM/kk

APPENDIX - 46

January 7, 1980

Wyoming Civil Service Commission
Wyoming City Hall
800 Oak Avenue
Wyoming, Ohio 45215

Gentlemen:

By this letter I wish to appeal the discharge of Jackie L. Roy as a Patrolman, as set forth in a letter from Acting City Manager L. R. Orendorff dated January 4, 1980, a copy of which is attached hereto. I do so as Patrolman Roy's attorney.

Please note our objection to any participation by Mr. Orendorff as a member or other officer of the Civil Service Commission in this appeal. It is absolutely anomolous for a single person to testify before this body as the appointing/discharging official and to participate in any manner whatever with this body in an evaluation of his own acts, as he could hardly purport to sit impartially with the Commission Members.

Attached you will find a copy of a letter addressed to Mr. Orendorff, asking for a specification of the charges against Patrolman Roy. The naked statement of "failure of good behavior" is a difficult -- if not impossible -- charge to answer, and, unless such specification is made promptly we will be unable to prepare for the hearing which we expect you to schedule.

I should also appreciate your providing me with a copy of any rules you may have promulgated relating to hearing procedures.

Thank you.

Very truly yours,

FRENCH, MARKS, SHORT,
WEINER & VALLEAU

Edward G. Marks

EGM/pdf

Encl.

January 7, 1980

Mr. L.R. Orendorff
Acting City Manager
Wyoming City Hall
Oak & Washington Sts.
Wyoming, Ohio, 45215

Dear Mr. Orendorff:

As you know, Patrolman Jackie L. Roy has retained me to represent him. He has given me a copy of your letter of discharge dated January 4, 1980.

By this letter I am requesting that you immediately amend that order by specifying the acts or omissions constituting "failure of good behavior" upon which you are relying to justify or support Patrolman Roy's discharge.

Very truly yours,

FRENCH, MARKS, SHORT,
WEINER & VALLEAU

Edward G. Marks

EGM/pdf

CC: Civil Service Commission
Douglas G. Cole, Esq.
Acting City Solicitor

I join in the foregoing letter, and designate Edward G. Marks and French, Marks, Short, Weiner & Valleau (or any of them) as my attorneys.

Jackie L. Roy

CC: Douglas G. Cole, Esq.

January 18, 1980

Mr. Edward G. Marks
Acting Counsel for Jackie L. Roy
700 First National Bank Building
Cincinnati, Ohio 45202

Dear Mr. Marks:

You have asked me to specify the acts or omissions constituting a failure of good behavior as to Jackie L. Roy.

These acts include:

1. Engaging in partisan political activity by seeking the office of Councilman in the Village of Elmwood Place, Ohio, on the Republican ticket, campaigning therefor, being elected to such office and refusing to resign, after being sworn into said position, all while holding the classified civil service position of patrolman in the City of Wyoming, Ohio, contrary to O.R.C. 124.57.

2. Representing to the City Manager, City Solicitor, and Police Chief of the City of Wyoming on October 17, 1979 that he would not campaign for the position of Elmwood Councilman, and if elected, after being sworn in, would immediately resign. After his election, when faced with a demand to fulfill such representations, he did refuse to carry same out, and to this date has continued in the office of Elmwood Councilman.

But for such misrepresentations, the City Manager would have discharged Mr. Roy on October 17, 1979. By such misrepresentatioms. (sic) Mr. Roy did unjustly receive his salary for the period October 17, 1979 to January 4, 1980.

3. By holding an elective office while in the classified civil service in the City of Wyoming police department, the operation of which is in part funded by Federal funds, he has violated Title 5 Sec. 1502, which continued violation could result in the loss of such Federal funds to the City of Wyoming, Ohio.

Sincerely,

/s/ L. R. ORENDORFF
L. R. Orendorff, City Manager
City of Wyoming, Ohio

CC: Douglas G. Cole, City Solicitor
Wyoming Civil Service Commission

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

Case No. A801776

JACKIE L. ROY

Plaintiff-Appellant

and

CIVIL SERVICE COMMISSION,
CITY OF WYOMING

Defendant-Appellee

STIPULATIONS

The parties hereby stipulate that this matter is properly before this Court as an Appeal from the Order of the Wyoming Civil Service Commission, and may be tried to the Court upon the following bases, in lieu of presentation of testimony:

EXHIBITS

(A) The "Agreed Stipulation of Facts" jointly introduced before the Civil Service Commission, City of Wyoming, together with all exhibits thereto.

(B) The Order of the Civil Service Commission with all exhibits thereto; a copy of this item was attached to the Complaint.

(C) Civil Service Commission Rules (Regulations) IX and X.

ADDITIONAL FACTS

(1) Elections for office in the City of Wyoming are conducted upon non-partisan ballots.

(2) The position vacated as a result of Patrolman Roy's termination remains unfilled.

(3) Patrolman Roy advised his immediate superior (Chief Robert Hess) of his candidacy for the Elmwood Place Council sometime in June, 1979. To the best of his recollection, Mr. Orendorff's first knowledge of said candidacy was in late August or early September. His first indication to Patrolman Roy of any potential conflict was his letter of October 9, 1971.

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Opposition

81-491

No. ———

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ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

JACKIE L. ROY,

Petitioner,

v.

CIVIL SERVICE COMMISSION
CITY OF WYOMING, OHIO,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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SUMMARY OF ARGUMENT

The proposition is well established that a government may, consistent with the First Amendment to the Federal Constitution, restrict classified civil service employees from all partisan political activity.

ARGUMENT

O.R.C. 124.57 provides, in pertinent part:

> ". . . nor shall any officer or employee in the classified service of the state, the several counties, cities . . . be an officer in any political organization or take part in

politics other than to vote as he pleases and to express freely his political opinions."

It is the position of Respondent, concurred in by the Ohio Court of Appeals for the First Appellate District, and the Supreme Court of Ohio that this statute is a constitutional prohibition of all partisan political activity by anyone in the classified civil service, was enacted for valid reasons and is not overbroad.

The purpose of the Federal Hatch Act, 5 USCA § 7324 (a), and 5 USCA § 1502, and all the Little Hatch Acts of the fifty states, including O.R.C. 124.57, is to make persons in the classified service independent of any political party control for appointment to and continuance in office, and to enable such persons to pursue their duties unaffected by a political party's fortune in the political area. *Heidtman* v. *Shaker Heights,* (1955), 163 O.S. 109, 126 N.E. 2d 138; *Broadrick* v. *Oklahoma,* (1973), 413 U.S. 601, 37 L.Ed.2d 930.

Such prohibition of all partisan political activity is not constitutionally overbroad, does not require any balancing test be applied, and is a lawful enactment of the legislature. *Gray* v. *Toledo,* (1971), 28 O.Misc. 141, 323 F.S. 1281; *United Public Workers* v. *Mitchell,* (1945), 330 U.S. 75, 91 L.Ed. 754; *CSC* v. *Letter Carriers,* (1973), 413 U.S. 548, 37 L.Ed.2d 796; *Broadrick* v. *Oklahoma,* (1973), 413 U.S. 601, 37 L.Ed.2d 930; *Magill* v. *Lynch,* (1977), 560 F.2d 22 (CCA-1); *Jackson* v. *Coffey,* (1977), 52 O.S.2d 43, 368 N.E.2d 1259; *Jackson* v. *Chapman,* (1978), 54 O.S.2d 282, 376 N.E.2d 580.

CONCLUSION

It is respectfully submitted that petition has wholly failed to sustain his burden of establishing under Rule 19 that there are special and important reasons why the writ should be granted. The decision below did not involve an important question of federal law which has not been, but should be settled by this Court, nor did it decide a federal question in a way to conflict with applicable decisions of this Court. The decision below was correct.

Respectfully submitted,

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